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AGREEMENT BETWEEN THE CITY OF LAKE ELSINORE AND CR&R INCORPORATED, DBA LAKE ELSINORE ENVIRONMENTAL, FOR THE COLLECTION, TRANSPORTATION, RECYCLING, COMPOSTING, AND DISPOSAL OF SOLID WASTE, RECYCLABLES, COMPOSTABLES, YARD WASTE, CONSTRUCTION DEBRI, TEMPORARY BINS, AND ROLL-OFF BIN SERVICES.

This Franchise Agreement ("Franchise Agreement") is entered into this 9th day of June 1992, by and between the City of Lake Elsinore ("City") and CR&R Incorporated, DBA Lake Elsinore Environmental, ("Grantee"), for the exclusive collection, transportation, recycling, composting, and disposal of solid waste, recyclables, compostables, yard waste, construction debris, temporary bins, and roll-off services within residential, industrial, and commercial areas of the City.

#### RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for the disposal of solid waste and for recycling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City of Lake Elsinore ("City") has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified enterprise for the collection, transportation, recycling, composting, and disposal of solid waste, recyclables, compostables, yard waste, temporary bins and roll-off services in residential, industrial, and commercial areas in the City of Lake Elsinore; and

WHEREAS, the City Council of the City of Lake Elsinore declares its intention of maintaining reasonable rates for the service provided under this Agreement.

WHEREAS, this Agreement supersedes all other agreements for such services within the City.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### SECTION I. GRANT OF COMMERCIAL, RESIDENTIAL, CONSTRUCTION, INDUSTRIAL, AND TEMPORARY BIN EXCLUSIVE FRANCHISE

This Franchise Agreement grants an exclusive franchise as provided herein and pursuant to the Lake Elsinore Municipal Code and California Public Resources Code Section 40059(a)(1) to CR&R Incorporated, DBA Lake Elsinore Environmental, for the collection, transportation, recycling, composting, and disposal of solid waste, recyclables, compostables, yard waste, construction debris, temporary bins, and roll-off bin service in commercial and industrial ("commercial") and residential and multifamily ("residential") areas within the City of Lake Elsinore. Grantee shall be considered the "authorized recycling

agent" under AB939. This right extends to any territory annexed to the City except to the extent that exercise of such a right would be unlawful or interfere with an existing agreement.

## SECTION II. DEFINITIONS

Whenever any term used in this Franchise Agreement has been defined by the Lake Elsinore Municipal Code or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

### A. AB939

"AB939" shall mean the California Integrated Waste Management Act of 1989, and the regulations thereunder as those may be amended from time to time.

### B. Bins

"Bins" means those containers provided by Grantee for commercial, industrial, construction, and multi-family residential uses. Bins are of two types: (i) Bins (usually 3 cubic yards in size) which are picked up by refuse trucks by means of front loading apparatus; and (ii) Roll-off Bins (usually 40 cubic yards in size) which are picked up by trucks using rear loading winches onto rails.

### C. City Limits

"City Limits" means the boundaries of the City together with all amendments and changes thereto, which boundaries are shown by maps incorporated herein by reference and which are on file in the office of the City Clerk of the City Council.

### D. Grantee

"Grantee" means CR&R Incorporated, DBA Lake Elsinore Environmental, the entity granted the Franchise pursuant to this Franchise Agreement.

### E. Special Wastes

"Special Wastes" shall mean all the items and materials which are set forth on Exhibit "B", "Special Wastes".

## SECTION III. ACCEPTANCE; WAIVER

Grantee agrees to be bound by and comply with all the requirements of this Franchise Agreement, as well as any and all applicable local, state, and federal laws and regulations as they are existing now and as they may be amended from time to time. Grantee waives Grantee's right to challenge the terms of this Franchise Agreement under Federal, State or local law, or administrative regulation, as such laws and regulations exist as of the date of execution of this Agreement and as they may be amended.

#### SECTION IV. FRANCHISE AREA

##### A. Franchise Area Defined

The Franchise Area granted by this Franchise Agreement shall be all residential, commercial, industrial, and construction premises. As provided below, the Franchise Area may be changed by annexation.

##### B. Annexation Covered by Existing Franchise

Territory annexed to the City that is covered by an existing solid waste or construction debris permit, license, agreement, or franchise granted by another public entity may continue to be served by the same grantee for the balance of the term of its permit, license, agreement, or franchise, subject to the provisions of this Franchise Agreement.

#### SECTION V. SERVICES PROVIDED BY GRANTEE

##### A. General

Grantee shall provide the collection, transportation, recycling, composting, and disposal of solid waste, recyclables compostables, yard waste, construction debris, temporary bins, and roll-off bin services within the Franchise Area in accordance with the terms of this Franchise Agreement. Grantee shall coordinate routes with the City of Lake Elsinore.

##### B. Single Family Residential

Grantee shall provide the same level of service set out herein but without automated pickup or pickup of recyclables during the interim period. It is understood that effective January 1, 1993 full implementation of automated pickup and the appropriate recycling and composting program shall commence.

##### 1. Weekly Service

Once each week before 6:00 P.M. and after 6:00 A.M. Grantee shall collect the solid waste, compostables, and recyclables (except bulky items and household hazardous waste) which have been placed, kept, or accumulated in containers at single family residences that are billed directly by the Grantee within the Franchise Area and placed at curbside prior to Grantee's normal weekly collection time. All solid waste, compostables, yard waste, and recyclables must be placed within containers curbside or in alleys without obstructions so as to permit collection, except for actual bin/barrel enclosures.

2. Grantee shall clean-up any refuse spilled or dropped around containers, whether or not spilled by Grantee. Notwithstanding, the additional can rate shall apply where additional capacity is needed on a regular basis.

3. Grantee shall provide special manual carry-out services for those residents determined to have difficulty doing so themselves, due to physical disabilities and/or the configuration of their property. Grantee shall not receive special payment for this service. However, in the event such service

is requested by an otherwise capable resident solely for the convenience of such resident, Grantee shall retain the right to negotiate with such resident an additional charge.

4. Standard residential service shall include providing, maintaining and replacing three (3) 60-gallon watertight containers equipped with lid and wheels per residence which meet the minimum requirements set out in Exhibit "A" and which shall be in place by January 1, 1993.

5. Grantee shall notify customers in advance in writing of the acceptable contents of each container and shall notify customers of any change in that system. In general, waste shall be separated and disposed of as follows:

BLUE CONTAINER:

Glass Containers  
Cans (aluminum/tin)  
Newspaper  
Cardboard  
Junk Mail  
Phone Books  
Waste Paper  
P.E.T. Plastic  
H.D.P.E. Plastic  
Other Metals  
Cartons (cereal boxes, shoe boxes, etc.)  
Film Plastic

GREEN CONTAINER:

Grass Clippings  
Leaves  
Twigs  
Tree Trimmings  
Weeds  
Pallets  
Lumber  
Manure

BLACK CONTAINER:

Refuse  
All other solid waste



C. Semi-Annual and On-Call Bulky Household Item Pickup

1. At its expense, twice per year, at those times requested by City, Grantee shall provide up to ten (10) 40 Cubic yard roll-off bins at locations determined by City as part of any clean up campaign and shall dispose of such items at the appropriate facility. City shall not be required to pay landfill costs. Grantee shall adjust the number of containers by one for every increase of 4,000 to the City's population.
2. Grantee also shall provide on-call collection of bulky household items at no additional charge within no more than seven (7) days after an oral request. This is limited to two (2) items per pickup and two (2) pickups annually; thereafter, there shall be a charge as set out in Exhibit "C".
3. As used herein, "bulky household items" includes but is not limited to water heaters, refrigerators, washers, dryers, and other appliances, furniture, and mattresses as agreed to by the City and Grantee.
4. Grantee shall use its best efforts to recycle all items collected under this Subsection.

D. Household Hazardous Round-up

1. Semiannually, on dates designated by City as "Residential Household Hazardous Waste Roundup Day," Grantee shall conduct a residential household hazardous waste roundup at a central location designated by the City. Grantee shall accept only those non-permit required household hazardous wastes that are all recyclable; e.g. (to date), waste oil, antifreeze, and lead/acid batteries. Other types of waste shall be collected as allowed by changes in law and regulation. Grantee agrees to prepare all applications and manifests and to obtain all necessary approvals.
2. Grantee shall pay disposal and transportation fees which shall then be included as a factor in any rate increase. City shall be provided evidence of such costs.
3. Grantee shall coordinate with the County of Riverside's Mobile Household Hazardous Waste Collection Program designed to collect not only non-permit required household hazardous wastes but also permit required household hazardous wastes, e.g., pesticides, herbicides, oil/latex/water base paint, etc. The County and Grantee roundups shall be coordinated in an effort to provide all residents with non-permit required roundups semiannually and permit required roundups semiannually.
4. Grantee shall produce, keep current, and provide public education materials specifically outlining the bulky household item pickups and household hazardous waste roundups.

E. Commercial, Industrial, and Multi-Family Residential

1. Multi-Family Weekly Service

Not less often than once per week, and more frequently if required to handle the waste stream and insure the health and safety of the premises where the

bins are located, Grantee shall collect the solid waste (including bulky items which have been placed in a closed bin), yard waste, compostables, and recyclables (except household hazardous waste) which have been placed for collection in solid waste or recycling bins. Grantee shall provide maintain and replace three (3) cubic yard watertight painted steel bins with close-fitting plastic lids as required.

## 2. Multi-Family Bulky Household Item and Household Hazardous Waste Services

Grantee shall provide bulky item services to multi-family residences as described in V(C) above; however, special consideration shall be provided by Grantee for those bulky items that are impractical and unreasonable to place in a bin. Grantee shall coordinate with individual property managers of multi-family residences to effect the bulky item services set out in this section to the respective residents of the complex. The same household hazardous waste services provided, pursuant to Section V above for container service residences, shall be made available to all multi-family residents in the Franchise Area.

## 3. Commercial and Industrial Weekly Service

Not less often than once per week, and more frequently if required to handle the waste stream and protect the health and safety of the premises where the bins are located, Grantee shall collect the solid waste, compostables, yard waste and recyclables which have been placed for collection in solid waste bins. Only bulky household items placed in bins shall be picked up and there shall be no separate commercial and industrial bulky item pick up.

F. Grantee shall use its best efforts to recycle all items collected under this Subsection.

## G. Construction and Temporary Bin/Roll-off Services

Grantee shall provide any required construction and temporary bin/roll-off services using rates reflected in Exhibit "C".

## H. Items not in Containers Unacceptable for Pick-up

Bulky items, yard waste in bundles or other items not in containers which do not meet the size or other requirements of Lake Elsinore Municipal Code and which cannot be collected by Grantee under Sections B and C shall be tagged with a 2"x6" tag stating the Grantee's name, address, telephone number, and the reason for noncollection. Grantee shall provide such tags at its cost and shall maintain a record of such tags. If the reason for noncollection has not been remedied by the next regularly scheduled pickup, the Grantee shall notify City of the problem.

## J. Collection and Street Sweeping on Holidays or with Impediments

If the day of collection on any given route falls on a holiday observed by the landfill or other lawful disposal site to which refuse or debris collected within the Franchise Area is taken for disposal, or recycling facility to which recyclables are taken, Grantee shall provide collection services for such route on the workday next following such Holiday and shall not provide collection

services on such Holiday, except that Grantee shall never provide collection on New Year's Day, Thanksgiving Day, Christmas Day, July 4th, Labor Day and Memorial Day (Saturday is to be specifically designated herein as a regular work day). Grantee shall provide service despite impediments, including but not limited to weather, street repair, or illegally parked vehicles.

#### K. Street Sweeping

Grantee shall provide all labor, materials, equipment, and permits required to conduct public street sweeping services in accordance with accepted standards for municipal street cleaning. The term "street" shall mean the paved area between the normal curb line of a roadway, whether an actual curb line exists or not. It does not include sidewalks, areas adjacent to the roadway, or parking lots other than the parking lots specified below. The term debris shall mean all materials normally picked up by a mechanical sweeper, such as sand, glass, paper, cans, rocks, leaves, and other materials. Failure to provide efficient and effective street sweeping services shall be considered as a material breach of this Franchise Agreement.

##### 1. Sweeping Service

Grantee shall sweep and remove all debris from all commercial, industrial, and residential public streets including all curbs and medians, and City public parking lots owned and maintained by the City in the Franchise Area and future areas obtained through annexation on a weekly basis. Residential streets shall be swept on the day after that area's designated refuse collection day after all solid waste, recycling, and composting containers in the area have been serviced.

##### 2. Frequency of service to be as follows:

Downtown - 8 times per month.

Downtown Residential - 2 times per month.

Arterial/Collector - 4 times per month.

Residential - 2 times per month.

Alterations to the services as set out herein must be mutually agreed upon by the grantee and the City.

3. Through the public education program, residents shall be encouraged not to park on residential streets on the day scheduled for solid waste curbside and street sweeping services. City may, at City's sole option, implement no parking zones, with or without a violation system, on scheduled solid waste curbside and street sweeping days if the public education program is deemed ineffective and the mechanized refuse collection and street sweeping services are adversely affected.

3. When necessary for proper cleaning, Grantee shall make more than one pass on a street. Sweeping debris at a curb or median face to be a maximum depth of four (4) inches at the curb or median face and twenty (20) inches out from the curb or median face. Grantee shall immediately respond when notified by City to re-sweep unsatisfactory areas.

5. Sweeping residential streets is authorized between the hours of 6:00 A.M. and 6:00 P.M., and commercial and industrial streets and City public parking

lots shall be swept between the hours of 12:01 A.M. and 7:00 A.M., Monday through Saturday. Grantee shall notify the City Manager or designee when Grantee is prevented from performing effective sweeping services due to inclement weather. Sweeping services deferred due to inclement weather shall be completed the next regularly scheduled sweeping date, weather permitting.

6. Grantee shall dispose of all debris collected by hauling the same to legally established disposal areas. Transfer points for storage of debris must be approved by the City Manager or designee. Every effort shall be taken by Grantee to legally divert, as much as possible, the debris destined for disposal at a landfill. Grantee shall make arrangements with the local water authority for use of fire hydrants to obtain water necessary for the operation.

7. Additional sweeping services requested by City that are above and beyond that which is described above, Grantee shall be paid by the City at a rate of \$65.00 per hour.

#### 8. Term of Street Sweeping Service

The term of the sweeping services shall be for five (5) years commencing on January 1, 1993 and expiring on December 31, 1997. Providing that all performance criteria as illustrated in Section K are successfully accomplished, the City will extend the term of the sweeping services for an additional five (5) years, as well as every five (5) years thereafter. The City reserves the right to perform said services with its own personnel and equipment or another vendor at the end of any five (5) year period by 180 days written notice. The term of the sweeping services shall in no way effect the term or balance of term remaining on the primary contract which these sweeping services are apart of.

#### L. Additional Services

The following additional services are hereby provided to City, free of charge, by Grantee:

1. Grantee shall provide roll-off containers to any qualified legally existing non-profit entity, e.g., Boy Scouts, Girl's Clubs, churches, or City free of charge, for the expressed public and commercial purpose of the group or City collecting recyclables materials. Grantee shall pay these organizations or City top dollar for their recyclables they collect and deposit in the roll-off containers.

2. Grantee shall clean out any overflowing bins or enclosures within twenty-four (24) hours of oral notification by City, free of charge. Grantee shall work with the City Manager or designee in identifying continual problems in customer bins or enclosures.

3. Grantee shall collect all Christmas trees on the first two consecutive scheduled pickup days after New Year's Day. The trees shall be diverted from the landfill, for deposit at a composting or greenwaste facility.

4. Upon execution of this Agreement, Grantee shall supply City, including the Disaster Preparedness Committee, ambulance companies and police and fire departments with a sufficient number of empty earthquake/catastrophe preparedness 1 foot Haulaway storage containers, not to exceed ten (10) containers.

5. Grantee shall include Lake Elsinore within its anti-drug campaign. All bins and vehicles shall display an anti-drug logo, which has been mutually approved by Grantee and City as to design and location.

6. Annually, Grantee shall provide at least one 10 or 40 cubic yard roll-off bin (and more if necessary) to each of five official community events designated by the City Council and shall pickup and divert or dispose of contents of such bins at its expense, not to exceed fifteen (15) containers per year.

7. Grantee shall provide the services listed in this Agreement to the following locations within the City at no charge to City or the entities listed:

- (a) City Fire Stations
- (b) City Police Stations
- (c) City Hall and City Parks
- (d) Other City owned and operated facilities

8. Grantee shall sweep the areas utilized for the City's community events on the day before and immediately after the event at no additional cost to the City. Grantee shall be directed by the City which events require these services.

#### M. Additional Wastes

Grantee may, but is not required to, provide such collection, transportation, and disposal services for wastes not collected under this Agreement. Grantee may provide such services under separate written contracts negotiated between Grantee and the customer generating such wastes at a fee agreed to between Grantee and customer.

## SECTION VI. AB939 COMPLIANCE

### A. AB939 Compliance Guarantee

Grantee guarantees to City that assuming City and Grantee agree on programs, Grantee shall cause at least twenty-five percent (25%) by January 1, 1995, and fifty percent (50%) by January 1, 2000, of the waste stream collected under this Franchise Agreement to be diverted from ultimate deposit in landfills or transformation facilities in accordance with statutes in effect on the date of execution of this Agreement, as those may be amended.

1. Grantee shall submit to City, within ninety (90) days after approval by the City Council of the City's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE), a program designed to implement alternatives identified in the SRRE and HHWE, and shall make any subsequent

adjustments required as a result of County and State review. With City's approval, Grantee also shall develop and implement programs to meet new requirements of AB939 or similar State and Federal laws and regulations as adopted. Grantee specifically shall implement such programs within ninety (90) days after approval by the Council.

2. Grantee specifically shall implement the public education and awareness portions of the SRRE and HHWE, at Grantee's expense, as well as initiate a public education and awareness program in preparation for service start-up.

3. Grantee shall provide City with written reports in a form adequate to meet City's reporting requirements to the California Integrated Waste Management Board and to the County of Riverside throughout the term of this Franchise and any extension thereof setting out its performance under this program in detail.

4. The programs developed by Grantee shall be integrated with the balanced, regional solid waste management system presently being developed by the Western Riverside Council of Governments and the County of Riverside Waste Management Department.

5. Grantee shall dedicate a substantial portion of one full-time staff position to monitoring AB939 compliance.

6. Assuming City has required by ordinance that private parties report recyclables, yard waste or compostables diverted, Grantee shall assist City in developing and shall administer a private reporting system. Such amounts diverted shall be included in Grantee's AB939 reports.

7. All recyclables and compostables shall be delivered to facilities permitted to receive them.

#### B. Composting

Grantee shall collect all yard waste and compostables set out for collection and shall deliver all such materials to Recyc or another permitted composter as approved by the City Manager. The process shall be acceptable to the California Waste Management Board for diversion credits to the City.

### SECTION VII. FRANCHISE FEES

A. Franchise fee of ten point one percent (10.1%) of the Grantee's Gross Revenues less landfill fees, shall be payable by Grantee to City thirty (30) days after the close of each quarter of the Grantee's fiscal year.

### SECTION VIII. LETTER OF CREDIT; INSURANCE COVERAGE

#### A. Cash Bond or Letter of Credit

Contemporaneously with the execution of this Franchise Agreement, the Grantee shall deposit cash or an irrevocable standby Letter of Credit (in a form approved by the City Manager and City Attorney) in the sum of Twenty Thousand Dollars (\$20,000.00) in an interest bearing account in the name of the City,

with interest being paid to CR&R. The cash deposit shall serve as security for the faithful performance by Grantee of all the provisions and obligations of this Franchise Agreement.

1. Within thirty (30) days following Grantee's failure to pay the City an amount owing under this Franchise Agreement, the cash deposit may be accessed by the City upon five (5) days prior written notice to the Grantee for purposes including, but not limited to:

a. Failure of Grantee to pay the City sums due under the terms of the Franchise Agreement.

b. Reimbursement of costs borne by the City to correct Franchise Agreement violations not corrected by Grantee, after due notice.

c. Monetary remedies or damages assessed against Grantee due to breach of the Franchise Agreement.

2. The Grantee shall deposit a sum of money sufficient to restore the cash bond to the original amount within the ten (10) days after notice from the City that any amount has been withdrawn from the cash bond.

#### SECTION IX. CONTRACT TERM

This Agreement shall be for a term of ten (10) years, commencing on June 9, 1992 and expiring on June 8, 2002; provided, however, that commencing June 9, 1993 and each year thereafter, an automatic one (1) year extension shall be applied so that the term of the Agreement shall remain ten (10) years. Should either party wish to terminate the automatic renewal provision, such party shall give the other prior written notice to that effect thirty (30) days prior to June 9 of any year. Such notice shall terminate the automatic renewal provision and the Agreement shall remain in effect only for the ten (10) year balance of term.

#### SECTION X. FRANCHISE TRANSFERRABLE; CITY CONSENT REQUIRED

A. The franchise granted by this Franchise Agreement shall not be transferred, sold, hypothecated, sublet, or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the prior written consent of the City expressed by Resolution. Any attempt by Grantee to assign this franchise without the prior consent of City shall be void.

B. If the Grantee attempts to transfer the franchise prior to obtaining City consent, all of the profits or twenty-five percent (25%) of the Gross Revenues, from the date of attempted transfer until the date of City consent, whichever is greater, shall be returned to the customers on a pro rata basis.



C. The City shall not unreasonably withhold its consent to a transfer of the franchise granted by this Franchise Agreement.

D. City consent is required for any change in control of Grantee. "Change in control" shall mean any sale, transfer, or acquisition of Grantee. Grantee is a corporation, and any acquisition of more than ten percent (10%) of Grantee's voting stock by a person, or group of persons acting in concert, who then owns less than fifty percent (50%) of the voting stock, shall be deemed a change in control.

E. Any change in control of the Grantee occurring without prior City approval shall constitute a material breach of this Franchise Agreement.

#### SECTION XI. FRANCHISE TRANSFER; FEES

A. Any application for a franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by City by a Resolution of the Council, to cover the reasonable cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.

B. The Grantee shall, within thirty (30) days after receipt from the city of a written itemization, reimburse the City for its reasonable costs of granting and transferring this Franchise Agreement to the extent not recovered by prepaid application fees, not to exceed Five Thousand Dollars (\$5,000.00).

#### SECTION CI. EVENTS OF DEFAULT; IMPOSITION OF DAMAGES OR TERMINATION

A. The City reserves the right to terminate Grantee's franchise and/or impose liquidated damages set out herein upon Grantee's failure to perform its obligations under this Agreement, including but not limited to any of the following events:

1. If the Grantee practices, or attempts to practice, any fraud or deceit upon the City.

2. If the Grantee becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.

3. If the Grantee fails to provide or maintain in full force and effect the workers' compensation, liability, indemnification coverage, insurance, letter of credit, or cash deposit as required by the Franchise Agreement.

4. If the Grantee willfully violates any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Franchise Agreement, provided that the Grantee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the franchise shall be deemed to have occurred.



5. If the Grantee ceases to provide collection services as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reason within the control of the Grantee.

6. If the Grantee willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide City with required information, reports, and/or test results in a timely manner as provided in the Franchise Agreement.

7. If Grantee violates the terms, conditions, or requirements of this franchise, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder, which violation is not corrected or remedied within the time set in the written notice of the violation or, if the Grantee cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Grantee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

#### B. NOTICE OF DEFAULT AND TERMINATION

City shall give Grantee thirty (30) days written notice of a violation of any of the terms and conditions of this Agreement. Grantee shall have that period of time to remedy or begin to remedy the violation (if it cannot be fully corrected within the thirty day period) and shall provide evidence of such remedy satisfactory to the City Manager. In the event the violation has not been so remedied, the City may terminate the Agreement effective immediately or continue the franchise and impose liquidated damages.

#### C. LIQUIDATED DAMAGES

1. The City finds, and the Grantee agrees, that as of the time of the execution of this Franchise, it is impractical, if not impossible to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a material breach by Grantee of its obligations under this Franchise. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Franchise to individual members of the public for whose benefit this Franchise exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services/denial of quality or reliable services is impossible to calculate in precise monetary terms; and (IV) the termination of this Franchise for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

2. Accordingly, the City Council may, in its discretion, assess liquidated damages not to exceed the sum of Fifteen Hundred Dollars (\$1,500.00) per day, for each calendar day that service is not provided by Grantee in accordance with this Franchise Agreement.

3. The City finds, and the Grantee acknowledges and agrees, that the above described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Said liquidated damages sums shall be applicable to each calendar day of delay during which Grantee has been found by the City Council to be in material default pursuant to this Section. The Grantee shall pay any liquidated damages assessed by the City Council within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withdraw them from the security fund established by the cash bond required by Section 8A, above, order the termination of the franchise granted by this Franchise Agreement, or both.

### SECTION XIII. CITY'S ADDITIONAL REMEDIES

In addition to the remedies set forth in Section CI above, City shall have the following rights:

A. To use, rent or lease equipment from Grantee for the purpose of collecting, transporting, recycling, composting, and disposing of solid waste, yard waste, recyclables, and compostables which Grantee otherwise is obligated to do pursuant to this Franchise Agreement, for a period not to exceed six (6) months. In the case of equipment not owned by Grantee, Grantee shall assign to City, to the extent Grantee is permitted to do so under the instruments pursuant to which Grantee possesses such equipment, the right to possess the equipment. If City exercises its rights under this Section, City shall pay to Grantee the reasonable rental value of the equipment so taken for the period of City's possession thereof, except as set out in Section XIV.

B. To license or contract with others to perform the services otherwise to be performed by Grantee hereunder, or to perform such services itself; and

C. To obtain specific performance, damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Franchise Agreement by Grantee, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Franchise Agreement and to enjoin the breach thereof.

D. If Grantee is (1) the subject of labor unrest; (2) is unable to pay its bills as they become due or (3) is the subject of a filed civil or criminal proceeding, or the City Manager otherwise believes for these or other reasons that Grantee's ability to perform under this Agreement has been jeopardized, City may demand additional, reasonable assurances of timely and proper performance in a form acceptable to the City Manager.

### SECTION XIV. RIGHTS OF CITY TO PERFORM DURING EMERGENCY

A. Should Grantee, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section XXV, "Force Majeure," below, refuse or be unable to collect, transport, recycle, compost, and dispose of solid waste, yard waste, compostable, and recyclables under this Franchise Agreement for a period of more than seventy-two (72) hours, and if as a result thereof, debris, refuse, compostables, recyclables, and solid waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety, or welfare, then in such event City shall have the right, upon twenty-four (24) hour prior written notice to Grantee, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Grantee previously used in the collection, transportation, recycling, composting, and disposal of solid waste, yard waste, compostables, and recyclables under this Franchise Agreement, and to use such equipment and facilities to itself or by contract provide services pursuant to this Franchise Agreement. Grantee agrees that in such event it shall fully cooperate with City to effect such a transfer of possession for City's use.

B. Grantee agrees that, in such event, notwithstanding Section XIII, City may take temporary possession of and use all of said equipment and facilities without paying Grantee any rental or other charge, provided that City agrees that, in such event, it assumes complete responsibility for the proper and normal use of such equipment and facilities. City agrees that it shall return to Grantee possession of all of the above mentioned property upon evidence satisfactory to the City Manager that Grantee is able to resume its normal responsibilities under this Franchise Agreement.

#### SECTION XV.      PRIVACY

A. Grantee shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of customers.

B. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State law.

#### SECTION XVI.    REPORTS AND ADVERSE INFORMATION

##### A.    Annual Reports

Grantee shall submit a written annual report, in a form approved by the City, including, but not limited to, the following information:

1. A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class of service;

2. A report, in a form satisfactory to the City, on the City's progress in meeting and maintaining its ability to meet its goals under AB939, along with any recommended changes.

3. A list of Grantee's officers and members of its board of directors.

4. A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and any subsidiaries unless Grantee is a public corporation whose annual reports are publicly available.

##### B.    Adverse Information

Grantee shall provide City two copies of all reports, or other material adversely affecting the Franchise Agreement, submitted by Grantee to the EPA, the California Integrated Waste Management Board, or any other Federal or State agency. Copies shall be submitted to City simultaneously with Grantee's filing of such matters with said agencies. Grantee's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request, as provided in Section XXV, below.

1. The Grantee shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence, and actions by, any Federal, State, and local courts, regulatory agencies, and other government bodies relating specifically to Grantee's performance of services pursuant to this Franchise Agreement.

2. Grantee shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.

3. All reports and records required under this or any other section shall be furnished at the sole expense of the Grantee.

4. A copy of each of Grantee's annual and other periodic public financial reports and those of its parent, subsidiary, and affiliated corporation and other entities, as the City requests, shall be submitted to the City within thirty (30) days after receipt of a request.

#### C. Failure to Report

The refusal, failure, or neglect of the Grantee to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by the Grantee in such report, shall be deemed a material breach of the Franchise Agreement, and shall subject the Grantee to all remedies, legal or equitable, which are available to the City under the Franchise Agreement or otherwise.

D. Grantee shall prepare reports in compliance with AB939 as required by of this Agreement. In preparing such reports, Grantee shall include amounts of solid waste diverted by private parties or those not a party to this Agreement as set out in Section VI(A)(8).

### SECTION XVII. ANNUAL REVIEW OF PERFORMANCE AND QUALITY OF SERVICE

A. At City's sole option, within ninety (90) days of the first anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise Agreement, City may hold a public hearing at which the Grantee shall be present and shall participate, to review the Grantee's performance and quality of service (which shall include rate). The reports required by this Franchise Agreement regarding customer complaints shall be utilized as the basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

B. To provide for technological, economic, and regulatory changes in waste stream collection and recycling, to facilitate renewal procedures, to promote competition in the refuse, and recycling industry, and to achieve a continuing, advanced refuse collection, and recycling system. At City's sole option, on or about the second anniversary date of the Franchise Agreement, City may include in the public hearing on performance the refuse collection and recycling system and services. Subsequent system and services review hearings may be scheduled by City each two (2) years thereafter. Matters to be considered shall include, but not be limited to, the following:

1. All refuse collection, composting, and recycling services reported in refuse collection, and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided to City.

2. Services provided, feasibility of providing new services, application of new technologies, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, new initiatives for meeting or exceeding AB939's goals and regulatory constraints.

3. City and Grantee may each select additional topics for discussion at any systems and services review hearing, also to include but not limited to the additional services to the City, in accordance with any increase/decrease of the population within the City limits.

C. Not later than sixty (60) days after the conclusion of the public hearing, City shall issue a report. The report shall address the issues raised at the hearing. City may require Grantee to provide such services within a reasonable time, for reasonable rates and compensation. If noncompliance with the Franchise is found, Grantee may be given a notice to comply.

#### SECTION XVIII. COMPENSATION

A. Rates: Grantee shall provide the services described in this Franchise Agreement in accordance with the rates fixed by City from time to time, all as described as set forth in Exhibit "C", "Schedule of Rates". Those rates shall be modified and adjusted as set out in Exhibit "C".

B. Notice of Rate Increases: The Grantee shall provide the City and customers, at least thirty (30) days in advance of the beginning of a billing period, written notice of the anticipated implementation of changes in any of its rates and charges which are not subject to regulation by the City. The notice shall include a statement of the reasons for the rate increase.

C. Billing and Payment: Grantee shall bill directly all customers for all services, whether regular or special. Grantee shall provide itemized bills, distinctly showing charges for all services, including any charges for late payment. The Grantee shall not designate that portion of a customer's bill attributable to the franchise fee as a separate item on customers' bills. Billings may be made monthly in advance for commercial and all bin service customers, and may be made three (3) months in advance for residential customers.

D. Delinquent Accounts: Grantee may discontinue service as set forth in this Section. Persons who have not remitted required payments within thirty (30) days after the date of billing shall be notified on forms approved by City. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. Upon payment of the delinquent, redelivery, or reinstatement fees, if applicable, Grantee shall resume collection on the next regularly scheduled collection day.

E. Refunds: Grantee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is discontinued by the customer.

F. Information to City: City may request that Grantee provide City with mailing labels (or a disc therefore) at no cost to City.

#### SECTION XIX. COLLECTION EQUIPMENT

A. Grantee, at its expense, shall provide an adequate number of vehicles and equipment for the collection, transportation, recycling, and disposal of solid waste, recyclables, yard waste, and compostables for which it is responsible under this Franchise Agreement. The equipment of Grantee used under this Franchise Agreement shall be available for inspection by City, but shall not be subject to any permit fees.

1. All vehicles used by Grantee under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, set out above, and shall be kept clean and in good repair (including painting and dirt removal), shall be uniformly painted. A sufficient supply of parts must be kept on hand to ensure timely and continuous fulfillment of this Franchise Agreement. A list showing each vehicle so identified shall be supplied to City and maintained current. If City finds that any truck or equipment requires correction of defects, it shall not be used by Grantee in the performance of the Agreement until corrected to the reasonable satisfaction of City. The Grantee shall cause its vehicles to be inspected annually by the California Highway Patrol and the report of any and all California Highway Patrol inspections (annual or otherwise) shall be provided to City, at their request, within one week thereafter.

All truck bodies used by Grantee shall be constructed of metal and shall be watertight and leak-proof and so constructed as to prevent odors or falling, leaking or spilling refuse unless special arrangements are approved by City for certain areas. Each piece of equipment used by Grantee shall carry at all times a broom and shovel to be used for the immediate removal of any spilled material as well as fire extinguisher and first aid kit.

Each vehicle used within the City shall be washed at least once a week and steam cleaned once a month and shall at no time constitute a nuisance or menace to public welfare, health, and safety.

Vehicles proposed for use for refuse disposal, recycling, and composting purposes shall be of size, weight, nature, and type to be minimally intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the streets or adjacent properties.

2. All bins and containers provided shall be three cubic yard. The three cubic yard bins provided shall be steel bins with plastic lids. Contractor shall maintain all containers and shall replace those damaged.

3. Grantee has agreed to name the specific organization that shall provide all of the services under this Franchise Agreement as "LAKE ELSINORE ENVIRONMENTAL." This name shall be used for all correspondence, billing statements, directory listings, references, signs, vehicle identification, etc. The words "Owned and Operated by CR&R Incorporated" are authorized to follow this name.

4. "Lake Elsinore Environmental", a local or toll free telephone number, and vehicle number shall be visibly displayed on all vehicles in letters and figures no less than six inches (6") high. All refuse collection vehicles shall display the words "Serving the City of Lake Elsinore" in letters no less than eight inches (8") high.

5. All vehicles, high visibility bins, roll-offs, earthquake/catastrophe preparedness containers, and the residential container designated as the refuse container shall display CR&R's corporate Anti-Drug Campaign decal. The decal on the residential refuse container shall be located on the side of the container that will face the street when placed at curbside. The small inscription area on the top of all of the residential containers shall be labeled as follows: refuse container - "City of Lake Elsinore", recycling container - "Recycling - Everyone's Responsibility," and the greenwastes container - "Lake Elsinore's Commitment - 25% By 1995 - 50% By 2000."

6. All containers shall be replaced upright at the same location and shall not be damaged. Contractor shall immediately clean up any and all spills.

7. Grantee agrees to provide two street sweepers at the commencement of biweekly service (every other week). One heavy duty broom model for developing difficult to sweep areas and one heavy duty regenerative air sweeper for developed areas suitable for air sweeping.

## SECTION XX. PUBLIC ACCESS TO GRANTEE

### A. Office Hours

Grantee's shall maintain a toll free telephone number and office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M. daily, on all collection days. A representative of Grantee shall be available during office hours for communication with the public at Grantee's principal office. In the event that normal business cannot be rectified over the telephone, a representative of Grantee shall agree to meet with the public at a location agreeable to Grantee and the public. Normal office hours telephone numbers shall either be a local or toll free call. Grantee shall also maintain a local or toll free after hours telephone number for use during other than normal business hours. Grantee shall have a representative or answering service available at said after-hours telephone number during all hours other than normal office hours. Grantee shall have an emergency service vehicle available to respond to complaints or calls.

### B. Service Complaints

1. All customer complaints shall be directed to Grantee. Grantee shall record all complaints received by mail, by telephone, or in person (including



date, name, address of complainant, and nature of complaint). Grantee agrees to use its best efforts to resolve all complaints by close of business on the same day on which such complaint is received if received prior to 10:00 A.M. and by the close of business on the next business day on which such complaint is received if received after 10:00 A.M. Service complaints are subject to the provisions of Section XXI.

C. Government Liaison Person

The Grantee shall designate a "government liaison person" who shall be responsible for working with the City Manager or the City Manager's designee to resolve consumer complaints.

SECTION XXI. RESOLUTION OF UNRESOLVED CUSTOMER COMPLAINTS

A. The Grantee shall notify customers of this complaint resolution procedure at the time customers apply for or are provided service, and annually thereafter.

B. A customer dissatisfied with Grantee's decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer must request City review in writing within thirty (30) days of receipt of Grantee's response to the Complaint, or within forty five (45) days of submitting the complaint to the Grantee, if the Grantee has failed to respond to the complaint. The City may extend the time to request its review for good cause.

C. Before reviewing the complaint, the City Manager shall refer it once again to the Grantee. If the Grantee fails to resolve the complaint within ten (10) days, the City Manager shall review the customer's complaint and determine if further action is warranted. The City Manager may request written statements from the Grantee and customer, and/or oral presentations and may investigate the complaint.

D. The City Manager shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Franchise Agreement or a penalty of up to one hundred dollars (\$100.00) for any single event or series of related events, or any actual damages.

E. The City Manager may delegate these duties to a designee. The decision of the City Manager or his designee may be appealed to the City Council under procedures determined by the Council. The decision of the City Council shall be final.

F. Grantee shall maintain records listing the date and time of each consumer complaint, and the complaining customer, describing the nature of the complaint or request, and when and what action was taken by the Grantee to resolve the complaint. All such records shall be maintained and shall be available for inspection by City, as described in Section XXIV. Grantee shall prepare monthly summaries of consumer complaints. The summaries shall be available to the City Manager or the City Manager's designee.

## SECTION XXII. OWNERSHIP OF SOLID WASTE

Once solid waste, compostables, recyclables, and yard waste are placed for collection by Grantee, ownership shall transfer to Grantee. Subject to Grantee's duty to meet the source reduction and recycling goals which apply to City, Grantee is hereby granted the right to retain, recycle, compost, dispose of, and otherwise use such solid waste placed for collection by Grantee, compostables, recyclables, and yard waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Grantee. Grantee shall bear any loss and shall have the right to retain any profit resulting from its recycling, composting, disposal of, or use the solid waste, compostables, recyclables, and yard waste which it collects. Solid waste, compostables, recyclables, yard waste, or any part thereof, which is disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station, or material recovery facility), shall become the property of the owner or operator of the disposal site or sites once deposited there by Grantee. However, City, at its sole option, shall retain the right to require or designate the transformation facility, transfer station, material recovery facility or other disposal or diversion facility to be used to retain, recycle, compost, process, and dispose of solid waste, yard waste, recyclables, and compostables collected under this Agreement. In this instance, Grantee shall conduct a rate audit and recommend a rate adjustment.

## SECTION XXIII. INDEMNIFICATION AND INSURANCE

### A. Indemnification of City

Notwithstanding the provisions of Section 8, Grantee agrees that it shall protect, defend with counsel approved by City, indemnify, and hold harmless City, its officers, employees, volunteers, and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities, or judgments, including but not limited to attorneys fees, arising or alleged to arise out of or resulting in any way from Grantee's exercise or failure to perform under of this franchise, unless such claim is due to the sole negligence or willful acts of the City, its officers, employees, agents, or contractors, or from the City's grant of this franchise to Grantee. Subject to the scope of this indemnification and upon demand of the City, made by and through the City Attorney, the Grantee shall appear in and defend the City and its officers, employees, and agents in any claims or actions, whether judicial, administrative, or otherwise arising out of the exercise of the Franchise Agreement.

### B. Hazardous Substances Indemnification

Grantee shall indemnify, defend with counsel approved by City, protect and hold harmless City, its officers, employees, agents, assigns, volunteers and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorneys' and

expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees, agents, or Grantees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where Grantee stores or disposes of municipal solid waste or construction debris pursuant to this Franchise Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City from liability.

#### C. AB939 Indemnification

Grantee agrees to protect, defend, with counsel approved by City, and indemnify City against all fines or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and recycling goals or any other requirement of AB939 are not met by City with respect to the waste stream collected under this Franchise Agreement providing CR&R is negligent and at fault.

#### D. Workers' Compensation Insurance

Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed upon execution of this Agreement and maintained with the City Clerk throughout the term of this Franchise Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

#### E. Public Liability Insurance

Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement vehicle liability insurance occurrence with a minimum limit of \$5,000,000, a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of TEN MILLION DOLLARS (\$10,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding two hundred thousand dollars (\$200,000.00) per occurrence. Said insurance shall protect Grantee and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Franchise Agreement, whether such operations be by Grantee itself, or by its agents, employees, officers, and/or subgrantees. Copies of the policies or endorsements evidencing the above required insurance coverage shall be filed with the City upon execution of the Agreement. All of the following endorsements are required to be made a part of the insurance policies required by this Section:

1. "The City, its employees, officers, agents, and officers, are hereby added as additions insureds as respects liability arising out of activities performed by or on behalf of Grantee."

2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."

3. "This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company."

4. "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits, or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Clerk."

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City Manager every year and may be increased at that time to match the coverage provided by the City's own liability insurance policy, if that is greater. The City shall be included as an additional named insured on all policies and endorsements.

#### F. Modification

The insurance requirements provided here may be modified or waived in writing by the City Council upon the request of Grantee, provided the City Council determines such modification or waiver is in the best interests of City considering all relevant factors, including the fact that the Grantee or its parent may be self-insured up to a certain acceptable amount.

#### SECTION XXIV. GRANTEE'S BOOKS AND RECORDS; AUDITS

A. Grantee shall maintain all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, accounts payable records, maps, AB939 compliance records, and customer complaints, for the full term of this Franchise Agreement, and an additional period of not less than three (3) years, or any longer period required by law. The City shall have the right, upon five (5) business days advance notice, to inspect all maps, AB939 compliance records, customer complaints, and other like materials of the Grantee which reasonably relate to Grantee's compliance with the provisions of the Franchise Agreement. Such records shall be made available to City at Grantee's regular place of business.

B. Should any examination or audit of Grantee's records reveal an underpayment of any fee required under this Franchise Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Grantee by City. Should an underpayment of more than three percent (3%) be discovered, Grantee shall bear the entire cost of the audit with respect to franchise fees.

## SECTION XXV. GENERAL PROVISIONS

### A. Force Majeure

Grantee shall not be in default under this Franchise Agreement in the event that the services provided by the Grantee are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, and fires, strikes, lockouts, and other labor disturbances or other catastrophic events which are beyond the reasonable control of Grantee. Other catastrophic events do not include the financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Grantee. In the event a labor disturbance interrupts services by Grantee required under this Franchise Agreement, City may elect to exercise its rights under Sections CI, XIII and XIV of this Agreement.

### B. Independent Contractor

Grantee is an independent contractor and not an officer, agent, servant, or employee of City. Grantee is solely responsible for the acts and omissions of its officers, agents, employees, Grantees, and subgrantees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Grantee. Neither Grantee nor its officers, employees, agents, or subgrantees shall obtain any rights to retirement or other benefits which accrue to City employees.

### C. Pavement Damage

Grantee shall be solely responsible for any extraordinary damage to driving surfaces within the City, whether or not paved, resulting from vehicles providing refuse collection services directly attributable and at the location of bins, roll-offs, and containers on public or private property.

### D. Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, Grantees, or subgrantees of the Grantee to private or public property shall be repaired or replaced by Grantee within a reasonable time.

### E. Right of Entry

Grantee shall have the right, until receipt of written notice revoking permission to pass is delivered to Grantee, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing services for the collection, transportation, recycling, composting, and disposal of solid waste, yard waste, compostables, and recyclables pursuant to this Franchise Agreement.

### F. Law to Govern; Venue

The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

#### G. Fees and Gratuities

Grantee shall not, nor shall it permit any agent, employee, or subgrantee employed by it to, request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for temporary bin/roll-off services and the collection, transportation, recycling, composting, and disposal of solid waste, yard waste, compostables or recyclables otherwise required under this Franchise Agreement.

#### H. Prior Agreements and Amendment

This Franchise Agreement is intended to carry out City's obligations to comply with the provisions of the California Integrated Waste Management Act of 1989 ("AB939"), as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board ("Regulations"), as they from time to time may be amended. In the event that AB939 or other State or Federal laws or regulations enacted after this Franchise has been awarded, prevent or preclude compliance with one or more provisions of this Franchise Agreement, such provisions of the Franchise shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. No other amendment of this Franchise Agreement shall be valid unless in writing duly executed by the parties.

#### I. Compliance with Franchise Ordinance

Grantee shall comply with those provisions of the Lake Elsinore Municipal Code which are applicable, which is incorporated herein and with any and all amendments to such applicable provisions during the term of this Franchise Agreement.

J. Notices

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by telecopier (fax), or United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Lake Elsinore  
130 S. Main Street  
Lake Elsinore, California 92530  
Attention: Frank Tecca, Director of Public Services  
Telephone: (714) 674-3124  
Telecopier: (714) 674-2392

To Grantee: CR&R, Incorporated  
11292 Western Avenue  
Stanton, California 90680  
Attention: David Fahrion  
Telephone: (714) 826-9049  
Telecopier: (714) 895-5702

Copy To: Lake Elsinore Environmental  
233 West Markham Street  
Perris, California 92370  
Attention: Ed Campos  
Telephone: (714) 943-1991  
Telecopier: (714) 657-5493

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail, first class, postage prepaid.

K. Savings Clause and Entirety. If any provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.

L. Exhibits Incorporated

Exhibits "A" through "D" are attached to and incorporated in this Franchise Agreement by reference.

M. Counterparts

This Agreement may be executed in Counterparts.

WITNESS the execution of this Agreement on the day and year written above.

Dated:

June 26, 1992

CITY OF LAKE ELSINORE

By:

Ray M. Webb  
Mayor

ATTEST:

Vicki Kasad  
City Clerk

APPROVED AS TO FORM:

John R. Hays  
City Attorney

Dated:

\_\_\_\_\_

CR&R INCORPORATED  
DBA LAKE ELSINORE ENVIRONMENTAL

By:

Clifford R. Ronnenberg  
President



EXHIBIT C  
SCHEDULE OF RATES

1. Residential Rates through December 31, 1992: \$ 11.05 per month.
2. Residential rates through December 31, 1992 for hotels, motels, and businesses which do not use bin service.  
 1-4 cans (32 gallon maximum): \$13.30 per month  
 5-8 cans (32 gallon maximum): \$26.60 per month  
  
 This type of service shall terminate December 31, 1992
3. As of January 1, 1993, Fully-automated Single Family Residential Collection and Disposal, Refuse, Composting, and Recycling: \$12.82 per month
4. As of January 1, 1993, Fully-automated Single Family Residential Additional Refuse, Composting and Recycling Container Monthly Per Container Rate: \$ 5.00 per month
5. As of June 9, 1992, Single Family Residential Additional Bulky Item Pickup above the minimum of 2 per calendar year: \$ 5.00 per pickup  
 two items per pickup
6. As of June 9, 1992, Commercial, Industrial, and Multi-Family Residential Refuse Monthly Bin Rates (one 3 cubic yard bin) with following pickups per week:
 

1 x week	\$ 75.66	4 x week	\$249.85	7 x week	\$437.05
2 x week	\$125.05	5 x week	\$312.25		
3 x week	\$187.45	6 x week	\$374.65		
7. As of June 9, 1992, Commercial, Industrial, and Multi-Family Residential Refuse Monthly Bin Rates (one 1-1/2 cubic yard bin) with following pickups per week:
 

1 x week	\$ 55.68	4 x week	\$200.85	7 x week	\$351.30
2 x week	\$100.55	5 x week	\$251.00		
3 x week	\$150.70	6 x week	\$301.30		
8. Temporary 3 Cubic Yard Bin Rate: \$ 52.50 per pickup
9. Redelivery and Reinstatement Rate: \$ 25.00 per occurrence
10. 40 cubic yard Roll-off Bin Rate: \$145.00 + landfill fees
11. 10 cubic yard Roll-off/Lowboy Box Rate: \$145.00 + landfill fees

All rates based on a \$31.50/ton landfill fee.

## 12. ANNUAL CONSUMER PRICE INDEX ("CPI") AND TIPPING FEE ADJUSTMENT

The rates above shall be automatically adjusted to reflect changes in the consumer price index and landfill/MRF fees. The CPI adjustment shall be made annually and such adjustment shall be effective as of the first day of April of each calendar year. The CPI adjustment shall be equal to the amount derived by multiplying (a) the previous rate by (b) the percentage increase or decrease in the Consumer Price Index for all urban consumers within the Los Angeles-Anaheim-Riverside Metropolitan Areas during the prior calendar year, excluding the housing component. The comparison shall be made for each March 1st during the term hereof and shall be effective each April 1st. The first CPI adjustment shall occur April, 1993. The landfill tipping fee adjustment shall be a pro-rata pass through of any tipping fee increase, and shall be effective at the start of the first full billing period after the landfill tipping fee is adjusted. As of the effective date of this Franchise Agreement, the landfill tipping fee is \$31.50 per ton. The formulas for the annual CPI and landfill tipping fee are as follows.

(a) Residential, paragraphs 1-4

(1) (current rate - landfill component ) x CPI

(b) Commercial, Multifamily, and industrial,

(1) (current rate - landfill component ) x CPI

(c) Where the price for a roll-off container does not include landfill charges, any CPI increase, as set out above, shall be on 100% of the charge. Otherwise, the commercial percentages shall apply.

The landfill tipping fee adjustment or any other disposal facility fee may be a pro-rata pass through (based on weight) of any tipping fee increase, and shall be effective at the start of the first full billing period after the landfill tipping fee is adjusted. As of January 1, 1992, the landfill tipping fee is \$31.50 per ton and there is no existing MRF or transfer station fees.

### Residential - Landfill Pass Thru

(1) \$0.21 per \$1.00/ton landfill increase times current published residential recycling (less greenwastes) diversion rate, e.g., \$8.00 landfill increase with a 25% diversion rate would equal:  $\$.21 \times 8 = \$1.68 \times 25\% = \$.42 - \$1.68 = \$1.26$  rate increase.

### Commercial - Landfill Pass Thru

(2) \$0.91 per \$1.00/ton landfill increase times current published nonresidential recycling diversion rate less greenwastes, concrete, and asphalt, e.g., \$8.00 landfill increase with a 25% diversion rate would equal:  $\$.91 \times 8 = \$7.28 \times 25\% = \$1.82 - \$7.28 = \$5.46$  rate increase.

Any CPI rate increase shall be confirmed, reviewed and approved in advance by the City Manager.

#### 11. EXTRAORDINARY OR UNEXPECTED COSTS

In addition to, and not in lieu of, the annual CPI increase or decrease described above, Grantee may also be granted rate increases or decreases in an amount equal to Grantee's extraordinary increases or decreases in its costs. The City Manager shall determine the application process for such extraordinary cost increases or decreases. Such extraordinary cost increases or decreases shall be subject to City Council approval. Such extraordinary increases or decreases in its cost of collection shall include, by way of example and not by way of limitation: (1) a change in the location of the landfill or other lawful disposal sites to which the Grantee is required to transport solid waste collected hereunder; and (2) changes in the local, State or Federal laws governing temporary bin/roll-off services and collection, separation, transportation, recycling, composting, or disposal of solid waste and construction debris, (3) levied MRF fees to comply with AB939, and (4) the pro-rata amount of transportation and disposal cost of operating a household hazardous waste program shall be included by Grantee as an additional cost of service to be included in future rate increases.

## EXHIBIT B

### SPECIAL WASTES

Flammable waste

Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.)

Waste transported in a bulk tanker

Liquid waste

Sewage sludge

Waste from a pollution control process

Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or any other special wastes

Contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of any other special wastes

Dead animals

Waste water

Explosive substances

Radioactive materials

Materials which have been exposed to highly infectious or contagious diseases

Hazardous materials

EXHIBIT D

*by seeking - J. H. H.*

Grantee shall retire the debt within 180 days ~~to seek~~ a buyer for the Silver Street property, by selling or applying for a conventional loan to relieve the City of Lake Elsinore of its current financial obligations with the former Grantee, Jess Rodriguez Disposal Company. Grantee's intentions are to move all equipment, office staff, and maintenance procedures to their Perris facility, therefore Grantee has no intended use for this property.